

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C-10-80271-MISC-JSW (DMR)

Plaintiff,

v.

**ORDER TO SHOW CAUSE WHY  
PLAINTIFF'S APPLICATION FOR  
ORDER AND APPEARANCE OF  
JUDGMENT DEBTOR SHOULD NOT  
BE DENIED**

MICHAEL H. OBROWSKI,

Defendant.

On November 12, 2010, Plaintiff's Application and Declaration for Order and Appearance of Judgment Debtor ("Application") was referred to this Court for resolution. Plaintiff's Application, which seeks a judgment debtor exam to aid in the enforcement of a default judgment on a student loan, appears deficient for the following reasons.

Federal law regarding default on a student loan provides: "With respect to any State court judgment that is obtained by a lender or holder against a borrower for default on a loan insured under this subpart and that is subrogated to the United States... any United States attorney may register such judgment with the Federal courts for enforcement." *See* 42 U.S.C. § 292f (h)(3). However, the "procedure on execution [of a money judgment] – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed.R.Civ.P. 69 (a)(1). Under applicable California law, "[a] person sought to be examined [as a judgment debtor] may not be

1 required to attend an examination before a court located outside the county in which the person  
 2 resides or has a place of business unless the distance from the person's place of residence or place of  
 3 business to the place of examination is less than 150 miles." Cal. Code Civ. Proc. § 708.160 (b).  
 4 Furthermore, "[i]f the judgment creditor seeks an examination of a person before a court other than  
 5 the court in which the judgment is entered, the judgment creditor shall file an application that shall  
 6 include...[a]n affidavit in support of the application stating the place of residence or place of  
 7 business of the person sought to be examined." Cal. Code Civ. Proc. § 708.160 (d)(2).

8 The underlying state court judgment was entered in the County of San Bernardino.<sup>1</sup>  
 9 However, Plaintiff has requested that the judgment debtor exam take place not where the money  
 10 judgment was entered but in San Francisco. To that end, Plaintiff has not sufficiently attested that  
 11 the judgment debtor's place of residence or business is less than 150 miles to the place of  
 12 examination. Rather, Plaintiff attests that the judgment debtor "resides in the County of Los  
 13 Angeles," which is not located within 150 miles of San Francisco County (or Alameda County,  
 14 where this matter was referred).<sup>2</sup>

15 Thus, Plaintiff does not appear to set forth a proper basis to conduct the judgment debtor  
 16 exam in the Northern District. Accordingly, Plaintiff is ordered to show cause why its Application  
 17 to this Court should not be denied, in the form of a supplemental affidavit to be submitted by  
 18 Plaintiff no later than **November 24, 2010**.

19 IT IS SO ORDERED.

20  
 21 Dated: November 18, 2010



22  
 23 DONNA M. RYU  
 United States Magistrate Judge

24  
 25  
 26  
 27 <sup>1</sup> The proof of service of the amended state court judgment also indicates Plaintiff was  
 served in Alta Loma (located in San Bernardino County).

28 <sup>2</sup> Furthermore, the Court notes that Plaintiff's counsel is located in Los Angeles County.